

CHAPTER 6 – SERVICE OF PROCESS AND DEFENDANT’S ANSWER

STATUTORY REFERENCES: **RSA 173-B:3 (Commencement of Proceedings of Hearing)**
 RSA 173-B:8 (Notification)
 42 U.S.C Section 3796gg-5 (VAWA)

INTRODUCTION

If the plaintiff's petition is granted, it is the clerk's responsibility to insure that the paperwork will be given to the appropriate police agency and that it will be served on the defendant. The clerk shall make telephone contact with the law enforcement agency responsible for serving the petition to inform them that the order is being faxed to them. If the police department in the town where the incident occurred or where the defendant resides or is to be served is unavailable, the clerk should contact the sheriff's department or New Hampshire State Police to arrange for service of process.

A. INSTRUCTIONS TO PLAINTIFF

PROTOCOL 6-1

In every case, the clerk must:

- a. Give the plaintiff a certified copy of the petition with attachments, and a certified copy of the temporary order;
- b. Inform the plaintiff of the defendant's right to request an expedited hearing (within 3-5 business days);
- c. Explain that the defendant has the right to be present at the final hearing and may be represented by an attorney;

- d. Obtain satisfactory information from the plaintiff to allow the clerk to contact the plaintiff in the event a request is made for an expedited hearing; and,
- e. Review the temporary order with the plaintiff and make certain the plaintiff understands the need to return to court for a final hearing (the hearing date on the order should be specifically shown to the plaintiff).

COMMENT

The plaintiff should be instructed to return to court on the final hearing date, and to keep the court apprised of a current address and phone number, even if the defendant has not been served so that new temporary orders may be issued with a new court date. If a request for an expedited hearing is received, the court shall notify the plaintiff of the hearing by telephone and by written mailed notice.

- g. Make available the phone number of the local crisis center and the opportunity to have a court advocate present during the final hearing;

COMMENT

Courts routinely should advise petitioners of the high risk of violence when the defendant is served with the temporary restraining order and that the petitioners must act with an increased sense of awareness regarding their own safety. Furthermore, courts should advise and refer petitioners to local crisis centers (if an advocate is not already present) for safety planning. Victims may assume that obtaining a restraining order will automatically provide greater safety, when, in reality, a victim may be faced with greater danger at the time of obtaining an order.

- h. Explain to the plaintiff that he/she should be prepared to present evidence, including witnesses, supporting the allegations of domestic violence at that time. The plaintiff may also hire an attorney, if desired; and

COMMENT:

The clerk should exercise great care to keep all such information confidential.

- i. Provide the plaintiff with a copy of the Address Confidentiality Program brochure published by the NH Department of Justice.

B. SERVICE OF PROCESS UPON THE DEFENDANT

PROTOCOL 6-2

Immediately upon issuance of the temporary order, the staff should transmit the order to the Administrative Office of the Courts for entry into a registry.

PROTOCOL 6-3

Pursuant to RSA 173-B:8, Temporary Orders shall be served by a law enforcement officer.

COMMENT

Court staff should review all copies of the petition and temporary orders to ensure that the plaintiff's address is not transmitted with the paperwork to be served upon the defendant.

PROTOCOL 6-4

It is the responsibility of the court staff to verify transmission to the appropriate law enforcement agency, and that the order together with the underlying petition has been received and has been assigned for service. Included in the package must be: the petition; the Temporary Order, which includes the Notice of Hearing; the Return of Service form; and a copy of the Defendant Information Sheet for Law Enforcement.

PROTOCOL 6-5

Staff shall seal the Defendant Information Sheets and place them in the case file.

PROTOCOL 6-6

If a defendant is served at the courthouse, the court security officer, law enforcement officer or other staff member who has served the defendant shall complete a Return of Service form and follow the protocols below.

PROTOCOL 6-7

Upon the receipt from law enforcement of the completed Return of Service form, court staff shall fax it immediately to the AOC for entry into the registry.

PROTOCOL 6-8

If a named defendant is out of state or is a non-resident, the clerk must determine what law enforcement agency in the defendant's state of residence is responsible for service of domestic violence restraining orders and transmit forthwith, by facsimile transmission, a copy of the plaintiff's petition, court's order and scheduling notice to said department, together with a request to have it served upon the defendant immediately. The agency should be further

requested to make return of service in a similar manner; i.e., by facsimile transmission.

NOTE: Orders against military personnel should be transmitted to the duty officer for service by military police.

COMMENT

Amendments to 42 U.S.C. Section 3796gg-5 effective October 28, 2002 require any State, Indian tribal government, or unit of local government that receives funding under VAWA, to certify that it does not require that a victim of domestic violence bear any costs associated with the filing, issuance, registration, or service of a protective order. The Violence Against Women Office (VAWO) has designated the NH Department of Justice Grants Management Unit as the point of contact for problems with out of state service. Please call 603-271-7986.

NOTE WELL: Orders should be served without required fees or original documents. However, staff shall ensure that any out-of-state requirements are followed to guarantee service of process.

PROTOCOL 6-9

Service of process upon a minor defendant should, whenever possible, be in the presence of a legal guardian or a parent of the minor.

PROTOCOL 6-10

If the court has not received the Return of Service by the date set forth for the final hearing, the court staff should contact the local police, by telephone, to confirm that service has not been made. If service has not been made, the temporary order should be extended. An extension order should be prepared with a new court date and faxed to the AOC. Service should be again attempted, as described in this section. If, at the end of 12 months, service has not been completed, the plaintiff shall file a new petition.

C. DEFENDANT'S ANSWER

PROTOCOL 6-11

When a defendant files an answer or any other document to a domestic violence petition, a copy of the answer is to be sent immediately by the clerk to the plaintiff.

D. AMENDMENTS TO PLAINTIFF'S PETITION

PROTOCOL 6-12

The plaintiff shall be permitted to supplement or amend the petition if the defendant is provided time prior to the hearing to respond to the supplemented or amended petition. Any amendment shall be served upon the defendant.